

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2380 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RABIYABEN MUSABHAI DAMARI

Versus

ISMAILBHAI IBRAHIMBHAI TINTOIA

Appearance:

MS ROOPAL R PATEL for Appellants No. 1-2
SERVED BY RPAD - (N) for Respondent No. 1
MR SHASHIKANT S GADE for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 16/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under Section 30 of the Workmen's Compensation Act at the instance of the original claimants, challenging the judgment and award of Commissioner for Workmen's Compensation, Ahmedabad in Application No.158 of 1993.

2. By the impugned award, the applicants have been awarded compensation in the sum of Rs.89,600/-. The amount of compensation so awarded is the subject matter of the present appeal.

2.1 The appellants herein challenge the order only to the extent where interest and penalty have been refused to be awarded.

3. So far as the award of interest on the amount of compensation is concerned, the same would be the liability of the insurance company, whose counsel we have heard. Since this is a statutory liability under Section 4-A of the Workmen's Compensation Act, the learned counsel for the insurance company could not contest the claim.

3.1 It is also not in dispute that at the relevant point of time when the accident occurred namely, on 4th April, 1993, the relevant rate of interest was 6% per annum. Obviously, therefore, the appellants - claimants would be entitled to 6% interest on the amount of compensation awarded by the Tribunal.

4. So far as the question of penalty is concerned, the same would be the liability of the employer namely, respondent no.1. The said respondent no.1 in the present appeal has been served but is absent. Even before the Commissioner for Workmen's Compensation, the employer, though served, had remained absent.

4.1 In view of section 4-A (3), the employer has failed to provide any justification for the delay. In the premises aforesaid, the employer - first respondent herein would also be liable to pay penalty in addition to the amount of compensation.

4.2 Sub-section (3) of Section 4-A provides for a maximum penalty of 50% of the amount of compensation. On the facts of the case, since the employer has chosen to remain absent, though served, in the proceedings before the Commissioner for Workmen's Compensation as also before this court, we do not find any justification for taking any lenient view of the matter or in awarding any

penalty less than what is permissible in law. We, therefore, hold and direct that the employer - first respondent herein would also be liable to pay a further amount by way of penalty amounting to 50% of the amount of compensation awarded.

5. This appeal is, therefore, allowed to the aforesaid extent with no orders as to costs. Decree accordingly.

6. Mr. Gade for the insurance company states that the amount due under the present judgment and decree shall be paid to the appellants within six weeks from today.

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